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Hearing Date: August 6, 2021
Hearing Time: 10:00 a.m.

Counsel for COPIC Insurance Company

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: Chapter 11
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CERTA DOSE, INC., Case No. 21-11045-lgb
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Debtor.
:
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**COPIC INSURANCE COMPANY'S DISCOVERY REPORT FOR AUGUST 6, 2021
DISCOVERY HEARING**

COPIC Insurance Company ("COPIC"), by and through its undersigned counsel, Lewis Roca Rothgerber Christie LLP, hereby submits this Discovery Report pursuant to this Court's Chambers' Rules and in advance of the Discovery Conference scheduled for August 6, 2021 at 10:00 EDT.

1. Deficiencies in Debtor's Response to Discovery: On July 19, 2021, as authorized by the Court's Scheduling Order dated July 15, 2021, COPIC served limited discovery requests on the Debtor, attached as **Exhibit A**. To date, the Debtor has provided no responses to the three interrogatories, and a total of twenty five (25) documents. COPIC has in good faith, attempted to confer with Debtor's counsel regarding the Debtor's inadequate discovery responses (see email exchange attached as **Exhibit B**), but to date has received little meaningful response from Debtor's counsel other than she will respond in the future. The information requested is narrowly tailored to the issues to be heard by this Court on September 1 & 2, 2021, and should be provided immediately.

2. COPIC's responses to discovery requests: COPIC is the only party that timely produced documents on August 2, 2021 as directed in the Court's Scheduling Order. To date, COPIC has provided

the opposing parties with 698 documents, totaling 2,467 pages. As the Court requested at the last discovery conference, COPIC is in the process of identifying which of the documents it produced respond to which of the requests for production it has received from both the Debtor and Dr. Hernandez, and anticipates serving formal responses with this information on August 5, 2021.

3. Issue regarding Certa Dose documents provided during unsuccessful settlement discussions: As the Debtor (and, for that matter, Dr. Hernandez) well know, Certa Dose produced certain documents, including agreements between the Debtor and third parties, to COPIC as part of unsuccessful settlement discussions held last year. The materials were provided pursuant to a confidentiality agreement limiting the use of the documents to the settlement discussions. Not only are some of the documents provided as part of the settlement process directly relevant to the venue issues – and thus within the scope of the requests for production COPIC directed to the Debtor – but they also are called for by the Debtor's requests to COPIC. We have raised the issue of what to do regarding these documents with the Debtor's counsel, who has not responded. If the Court directs it to do so, COPIC is willing to produce the documents it deems relevant, but as a practical matter, the burden should fall on the Debtor to produce the materials.

4. Status of stipulations to limit issue for the hearing: As the Court is aware, most of the factual issues COPIC relies on in support of its motion to change venue (for example, where parties are located, what documents were executed by the parties) are not in dispute and cannot in good faith be disputed. In addition, many of the individuals who submitted Declarations in support of COPIC's motion have provided sworn responses to the interrogatories Dr. Hernandez submitted to them in lieu of the initial round of document production requests and deposition notices that originally were served on those parties. For example, a copy of the response on behalf of Stephen Hoffenberg, M.D., also represented by the undersigned, is attached as **Exhibit C**. As the Court directed, the undersigned counsel has conferred with Debtor's and Dr. Hernandez's counsel on July 15, and again on July 26, to discuss stipulations to narrow the issues for the hearing and obviate the need for unnecessary discovery efforts. No response has been received from the Debtor.

Dated: August 5, 2021.
Denver, Colorado.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

/s/ Chad S. Caby

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Counsel for COPIC Insurance Company

CERTIFICATE OF SERVICE

I certify that on August 5, 2021 I caused **COPIC INSURANCE COMPANY'S DISCOVERY REPORT FOR AUGUST 6, 2021 DISCOVERY HEARING** to be served on the following, through CM/ECF and/or email:

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